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CURRENT TOPICS

Exemptions from Development Charge: New Regulations

THE Town and Country Planning (Development Charge Exemptions) Regulations, 1950 (S.I. 1950 No. 1233), replace the previous Exemption Regulations (S.I. 1948 No. 1188). Paragraph 1 of the schedule to the regulations extends from 1,750 cubic feet to 7,500 cubic feet the maximum amount by which a dwelling-house may be enlarged, or enlarged on rebuilding, free of charge. The paragraph also provides that any building which has been enlarged by more than the exempted amount (the appropriate development charge being paid) can be rebuilt as so enlarged without charge. Paragraph 2 exempts the lateral conversion into flats of not more than three adjacent dwelling-houses erected before 1st July, 1948. This provision includes the conversion of an individual house into flats (which was previously exempt) and extends to houses under requisition on 1st July, 1948, and to war-damaged houses subject to a cost-of-works payment. Paragraph 3 exempts various changes of use, mainly between classes specified in the new Use Classes Order, as follows: (1) The use of part of a dwelling-house as a shop. This exemption is limited to 200 square feet of floor space, and the shop must be carried on by a person living in the house. (2) The use of a dwelling-house which was in existence on 1st July, 1948, as one of a variety of institutional and other uses, for example, a church hall, home for old people, clinic, hospital, nursing home or social centre. (3) The use of a shop as an office, and vice versa. (4) Changes of use between any of the special industrial classes. (5) As in Class 7 (4) of the 1948 Regulations, but the range of uses has been altered. Paragraph 5 exempts conversions of and improvements to houses, and conversions of other buildings to dwellings approved under Pt. II of the Housing Act, 1949. It should be noted that the new Town and Country Planning (Use Classes) Order, 1950 (S.I. 1950 No. 1131), which came into operation on 21st July, revokes and re-enacts the corresponding 1948 Order in a modified form (see p. 463, *ante*).

Damage by Mining Subsidence: Regulations

THE Minister of Fuel and Power has made regulations under the Coal-Mining (Subsidence) Act, 1950 (which received the Royal Assent on 28th July), providing that the time within which notice of the occurrence of subsidence damage to small dwelling-house property must be given to the National Coal Board shall be (*a*) in the case of damage which occurred before the passing of the Act, i.e., before 28th July, 1950, six months from that date, namely, up to 28th January, 1951; (*b*) in the case of damage occurring on or after 28th July, 1950, two months from the time when evidence of the damage first appears. The regulations also provide that the Minister or the National Coal Board may, on the written request of a claimant, extend the period should there be reasonable grounds for the grant of an extension. The application form on which all claims under the Act are to be lodged with the National Coal Board is available at certain local offices of the Board. (A list is to be found elsewhere in this issue.) Readers

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are reminded that the Act provides that all dwelling-houses having a rateable value not exceeding £32 (£52 in Scotland) which have been damaged since 31st December, 1946, or are damaged in the future by subsidence due to coal workings, are to qualify for a measure of compensation. The term "dwelling-house" includes detached, semi-detached and terraced houses, maisonettes, flats and also larger houses which, though still rated as a whole and in excess of £32 (£52 in Scotland) are each sub-let into a number of separate dwellings so that the average rateable value of each unit would be £32 (£52 in Scotland) or less. The use of a dwelling rated at £32 (£52 in Scotland) or less, partly as a shop or for other purposes, does not exclude it from the provisions of the Act. The measure of compensation is intended to provide for the making good of all structural damage which in any way renders the property unsafe, unsound, or seriously impairs its habitable condition or weather resistance. It does not provide, however, for the complete restoration of the premises to pre-damage condition.

Prohibition of Premiums and Mortgages of Leases

THE Council of The Law Society warn solicitors, in the August issue of the *Law Society's Gazette*, to make a careful note of the position under s. 2 of the Landlord and Tenant (Rent Control) Act, 1949, which they describe as "a trap for the unwary." One result of the section, which, they say, was probably unintended, was that if a long lease was granted at a so-called ground rent which was at least two-thirds of the net rateable value of the property, it might be virtually impossible for the lessee to obtain a mortgage. This was because, except where the ground rent was less than two-thirds of the net rateable value, there was a prohibition against obtaining any premium on assignment. The Council add that they are making inquiries into the whole matter with a view to seeing whether an amendment to the section can and should be made.

Sur-tax and Building Societies

UNDER a special arrangement with the Commissioners of Inland Revenue building societies pay tax at a composite rate, which is 5s. 2d. in the £ for 1949–50, and there is an alternative basis arrived at by various formulæ. Interest is paid tax free to shareholders and depositors. The income assessed for sur-tax purposes has been the net and not the gross income. This arrangement, according to a recent announcement by the CHANCELLOR OF THE EXCHEQUER, is to continue beyond April, 1952, the date up to which it had previously been authorised. Provision will be contained in next year's Finance Bill allowing for the prolongation of the arrangement up to April, 1957. He announced that the Bill would also "regularise the position of sur-tax payers." There is a little apprehension among sur-tax payers who have large holdings in building societies that this may mean that dividends and interest will be "grossed up" at the standard rate of 9s. and not at the composite rate paid by the societies. Substantial withdrawals and a flight of capital to other investments are undesirable and the position should be clarified in the interests of economic stability.

The Crown and Rights of Light

"THERE is no obvious reason," say the Council of The Law Society in the August issue of the *Law Society's Gazette*, "why . . . the Crown, on purchasing land which has been subject to a right of light for many years, should be able to disregard it and erect a building which might obscure almost completely windows on neighbouring land." It seems illogical that the Crown, under the Prescription Act, 1832, should be in a different position from a private person with regard to easements of light, especially, as the Council point out, having regard to modern legislation such as the Crown Proceedings Act, 1947. Members who have experienced cases of hardship are asked to communicate with the Secretary as soon as possible, giving particulars of such cases.

Rights of Surviving Spouses

MEMBERS of The Law Society are invited, in the same issue of the *Law Society's Gazette*, to make suggestions for the Council's consideration when settling their evidence to the Departmental Committee the appointment of which was announced by the ATTORNEY-GENERAL in the Commons on 3rd July (as to which see p. 428, *ante*). The Council say that they have pressed for an amendment to s. 46 of the Administration of Estates Act, 1925, for some time past. In 1948, they suggested to the Lord Chancellor that owing to the inflated value of dwelling-houses it would be reasonable to increase the sum of £1,000 to £5,000. Members who desire to do so should send their observations to the Secretary as soon as possible.

Disciplinary Powers of Professional Bodies

THE recent extension of the power of statutory committees to determine the professional destiny of qualified and experienced practitioners, subject only to an appeal to a Minister, was recently criticised by Lord Justice DENNING in his lectures on "Freedom under the Law." Mr. DENNIS LLOYD, Reader in English Law in the University of London, quoted this criticism in an article in the *Modern Law Review* for July, 1950, on "The Disciplinary Powers of Professional Bodies." After an exhaustive survey of the authorities on domestic tribunals, he wrote: "Yet this criticism must inevitably lack some of the urgency it would otherwise possess while, in the sphere of professional discipline, the law in effect permits such vital matters to be decided by domestic tribunals without the possibility of any appeal whatsoever." It seems odd to solicitors, who have their right of appeal to the courts from decisions of the Disciplinary Committee, that they should be privileged above others, but, as Mr. Lloyd points out in his article, "from an early period they were regarded as officers of the courts, and were admitted by and attached to particular courts which exercised control over them." Barristers also, he stated, possess a right of appeal to the Lord Chancellor and the judges of the High Court, sitting as a domestic tribunal (see Halsbury's Laws, Hailsham edition, vol. II, pp. 477–8). Similarly, he added, by s. 6 (3) of the Legal Aid and Advice Act, 1949, any solicitor or barrister who is removed from the panel of those willing to act for assisted litigants has a right of appeal to the High Court.

Recent Decision

In *Duchesne* v. *Duchesne*, on 31st July (*The Times*, 1st August), PEARCE, J., held that a husband respondent to a divorce suit against whom a decree of divorce had been granted was estopped on a maintenance application by the wife petitioner from asserting matters which were inconsistent with the decree and was prohibited for reasons of public policy from asserting matters which would reasonably have been expected, if proved, to provide an effective answer to the petition or to produce a different result at the trial (such as mutual decrees); but that in other cases, where the wife's conduct had contributed to the break-up of the marriage, the registrar should take such conduct into account in considering the question of maintenance.

Costs

DIVORCE—I

EARLIER in this series of articles we have touched on the question of divorce costs, particularly in relation to the matter of security; and we have now been asked to deal with the subject in greater detail.

One of the first points to notice, perhaps, is the fact that the amount of the wife's costs of divorce proceedings is, in certain circumstances, to be regarded as "necessaries," with the result that the whole amount thereof, that is, the solicitor-and-own-client costs, and not only the party-and-party costs, may be recovered from the husband. Thus, if the wife is successful in the proceedings, whether she is the petitioner or the respondent, the whole of the costs may be recovered from the husband, not because she is the successful party, but by reason of the common-law right to recover from her husband expenses or disbursements coming within the description of "necessaries."

Indeed, it is not necessary for the wife to be the successful party in order that this rule shall operate, for even if she is the unsuccessful party she may still be entitled to look to the husband for the amount of her costs, or rather her solicitor has a common-law right of action against the husband for the amount of the wife's bill of costs, where it can be shown that the wife had a *prima facie* case for divorce and that the solicitor acted reasonably and made adequate inquiries before embarking on the action on the wife's behalf (see *Abrahams, Sons & Co.* v. *Buckley* [1924] 1 K.B. 903). The same principle will apply where the husband is the petitioner. The wife in these latter circumstances is entitled to defend herself and her solicitor can look to the husband for payment of the costs incurred by the wife on the ground that such costs are necessaries (see *Re Wingfield and Blew* [1904] 2 Ch. 665).

On the other hand, this principle of necessaries will not apply where the wife has been guilty of adultery, and this is so even where the wife had concealed the facts from her solicitor and he proceeded on the assumption that the wife had a perfectly good case against the husband, and it was only afterwards discovered that the wife was guilty of adultery (see *Durnford* v. *Baker* [1924] 2 K.B. 587). Further, a wife who is judicially separated from her husband has no power to pledge his credit (*Re Wingfield and Blew, supra*), so that a solicitor who is acting for a wife in those circumstances should see that he obtains money on account from the wife before undertaking to act for her. The position may be different where the wife has merely obtained a maintenance order against the husband, for he is still liable for necessaries (*Sandilands* v. *Carus* [1945] K.B. 270), but even in these circumstances it is advisable for the solicitor to safeguard his position by obtaining some provision for his costs from the wife.

Turning now to the general principles with regard to the award of costs in divorce actions, it will be borne in mind that, although certain settled rules with regard to the costs have become more or less established, the absolute discretion vested in the court or judge with regard to costs by s. 50 of the Judicature Act, 1925, remains unfettered, for, as Lindley, L.J., stated in *Butler* v. *Butler* (1890), 15 P.D. 126, "Where an Act says that costs shall be in the discretion of the judge, I think it is not competent to any judge to lay down a rule which shall fetter other judges in the exercise of their discretion." Be that as it may, it will be found that certain rules have become established and a departure will only be made from them with reluctance.

The principle that the costs follow the event is, to a great extent, followed in divorce actions, and, as a corollary to this principle, in cases where the wife is unsuccessful she may be condemned in her husband's costs (see *Baldwin Raper* v. *Baldwin Raper and Metz* (1926), 42 T.L.R. 619); and it is not necessary, since the passing of the Law Reform (Married Women and Tortfeasors) Act, 1935, to prove that the wife possesses a separate estate (see *Jestice* v. *Jestice* (1945), 200 L.T. News. 42). Not only the husband but also the King's Proctor may obtain an order for costs against the wife where a decree *nisi* has been rescinded at the instance of the King's Proctor (*Kennard* v. *Kennard* [1915] P. 194).

Following the rule with regard to the husband's liability for his wife's necessaries it is customary to award the wife the reasonable and proper costs of prosecuting her petition or of defending that of her husband, but she will be deprived of her costs and may have to pay her husband's where her defence is unreasonable or her charges against her husband are reckless and unfounded (*Courage* v. *Courage* (1931), 47 T.L.R. 395), and this might be so even where her separate income is derived only from payments made under a deed of separation (see *Clark* v. *Clark and Saldji* [1906] P. 331).

So much, then, for the costs awarded against the husband and wife respectively. We now come to the question of costs in relation to a co-respondent. Again, by virtue of s. 50 of the Judicature Act, 1925, the court or judge is vested with absolute discretion as to awarding costs against the co-respondent, and, indeed, the court or judge has been vested with this discretion since the passing of s. 34 of the Matrimonial Causes Act, 1857.

However that may be, a rule came to be established by virtue of which a co-respondent was made liable for the costs of the proceedings only in those cases where it was clearly proved that he was aware from the inception that the woman with whom he had committed adultery was a married woman. This principle was established in 1858 in the case of *Teagle* v. *Teagle and Nottingham* (1858), 1 Sw. & Tr. 188, and was more or less consistently followed thereafter. This case, in fact, established two basic principles, namely, that the proof that the co-respondent knew the woman with whom he had committed adultery to be a married woman had to be provided affirmatively by the petitioner husband, and further, that in considering the question of awarding costs it must be accepted as axiomatic that the court does not sit to punish mere immorality. This latter proposition was again stressed by McCardie, J., in the case of *Butterworth* v. *Butterworth* [1920] P. 126, where his lordship states, at p. 139, "That it is not the function of the court to punish adultery as such or to penalise mere sexual immorality as such seems to be cogently shown by the apparently settled rule that costs are not given against a co-respondent who was unaware at the time of his adultery that the woman was married."

This principle as to costs in relation to the co-respondent was extended by later cases, with the result that costs were not awarded against the co-respondent where, at the time when intimacy first took place, he was unaware that the woman was married, but later became aware of the fact and still continued his association with her. The reasoning underlying this extension of the rule is clearly put by Jeune, P., in the case of *Bilby* v. *Bilby and Harrop* [1902] P. 8, where his lordship observes: "The rule laid down by my predecessors is fair and proper enough, that where a co-respondent has found out, when too late to repair the wrong done, that the woman

with whom he has taken up is a married woman, he ought not, because he does not then desert her, to be held liable for costs."

These, then, were the more or less settled principles upon which costs were awarded against the co-respondent, and they persisted until 1920. In that year, however, Duke, P., stated in the case of *Langrick* v. *Langrick* [1920] P. 90: "I am not prepared at present to say that in every case in which the co-respondent was not aware that the respondent was a married woman he must escape from costs. In my view that is an attempted limitation of the discretion which the Legislature has reposed in the court to which I ought not to assent. Every case must be judged upon its facts . . ."

This followed the earlier decision of Hill, J., in the case of *Norris* v. *Norris and Smith* [1918] P. 129, where his lordship stated that, whilst agreeing with the proposition that the co-respondent who was living with a wife and had committed adultery with her should not be condemned in the costs of the suit, where he was living with the woman without knowledge that she was married, but afterwards became aware of that fact and refused to desert her, he could not agree that in *any* circumstances such as this the husband was not entitled to the costs of the suit.

At the present time, therefore, there is no settled rule with regard to the award of costs against the co-respondent, and costs will be awarded against him at the discretion of the judge. Even where the co-respondent was aware at the time when he committed adultery that the woman was a married woman, he may yet not be condemned in the costs of the suit if it can be shown that the woman was very profligate before the co-respondent met her. The cases in support of this proposition are old ones, but the principle still remains.

There we must leave the matter for the present, but we shall continue with a consideration of the principles on which costs in divorce suits are awarded in our next article, when some consideration will also be given to the more practical side of the matter.

J. L. R. R.

A Conveyancer's Diary

NEW LIGHT ON *RE CHARDON*?

THE decision in *Re Chardon* [1928] Ch. 464 is one of the most controversial of recent years, and a small bibliography could be compiled of the comments and criticisms passed upon it in text-books and learned periodicals. But, apart from a cursory reference to it in *Re Fry* [1945] Ch. 348, the case had never, so far as I am aware, been the subject of comment from the bench until the other day, when two cases came before Wynn Parry, J., which were in some respects so similar in their circumstances to *Re Chardon* that some analysis of this famous decision became inevitable. The two recent cases, just reported in the Law Reports, are *Re Wightwick's Will Trusts* [1950] Ch. 260, and *Re Chambers' Will Trusts*, *ibid.*, 267.

In *Re Chardon* there was a gift by cl. 8 of the testator's will of £200 to trustees upon trust to invest and pay the income to a cemetery company "during such period as they shall continue to maintain and keep" certain graves in their cemetery in good order and condition, and "if the said graves shall not be kept in the order and condition hereinbefore specified" the trustees were directed to pay and apply the income of the said sum to the bodies who, upon the true construction of the will, were held to be the ultimate residuary beneficiaries under the will. (The relevant parts of the will, which are briefly summarised in the report, can be found in an appendix to the 5th ed. of Tudor on Charities, together with a criticism of the decision from the point of view—rather different from that from which this article is written—of the law relating to charitable trusts.)

On first impression this odd bequest certainly looks as if it might be invalid, and that is the way that it appears to have struck the learned judge (Sir Mark Romer, J.), who, after mentioning the cases in which it has been repeatedly held that a trust to keep in repair a tomb not in a church is invalid, such trusts not being charitable, observed that at first sight the gift before him might be invalid on the same principle. But such a conclusion, he went on to say, was too hasty: if the gift was bad it was because there was some principle in law or equity which made it so, and the only rules which would invalidate the gift were the rules, respectively, against perpetuities and against inalienability. The applicability of these rules to the gift was then considered. As to perpetuities, the primary gift to the cemetery company vested at once, and there was, therefore, no question of any infringement of that rule. (Although the summons in this case was framed in the form of a question asking whether the gift in favour of the cemetery company and the gift over was valid or void for perpetuity or otherwise, I do not think it has ever been suggested that there was here a direct infringement of the rule: the argument of those interested to upset the gift was that it tended to a perpetuity because the subject-matter of it had been made inalienable.) As regards alienability, it was also held that there had been no infringement of the rule, and on this part of the case the basis of the judgment may be summarised thus: the interest of the cemetery company under the gift was not inalienable, because they could always dispose of it, if they could find a purchaser; and the cemetery company and the persons interested in the gift subject to the interest of the cemetery company (i.e., the ultimate residuary legatees, whose interest, on this footing, was, like that of the company, a vested interest) could combine at any time and dispose of the whole legacy. The declaration of the court, therefore, was that the trust contained in cl. 8 of the will was valid, that is to say, both the primary gift to the cemetery company and the gift over were held to be good.

In *Re Wightwick* there was a gift by will of £2,000 in trust to invest and (shortly) to pay the income half-yearly to the treasurer for the time being of the International Association for the Total Suppression of Vivisection (the predecessor of the National Anti-Vivisection Society), the income to be at the disposal of the committee for the time being for the purposes of the association "until the time shall arrive that the practice of vivisection be made penal by law within the United Kingdom . . . and shall also be made a punishable offence upon the continent of Europe and elsewhere." From and after that time the testatrix directed the legacy to be held on certain similar trusts for the R.S.P.C.A. As a result of the decision of the House of Lords in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31, it became clear that the primary trust for the benefit of the anti-vivisection association or society was not a charitable trust, and this led to the application to the court. Wynn Parry, J., dealt with both gifts, the primary gift and the gift over. As to the first, he distinguished *Re Chardon*

on the ground that in that case there had been a gift of income for an indefinite period, *simpliciter* (which could be aliened by the donee in the manner pointed out by Sir Mark Romer, J.), whereas in the present case there was a trust which bound the recipients to apply the income for the furtherance of its objects, and the existence of this trust rendered the capital of the gift inalienable. (The relevant rules on this aspect of the case can be found in Jarman on Wills, 7th ed., p. 248 *et seq.*) As to the gift over, this gift was, on construction, a contingent gift and therefore failed as there was no certainy that it would vest (if at all) within the period allowed by the rule against perpetuities: the primary gift being for a non-charitable object, the fact that the gift over was for a charitable object could not save it from invalidity on this ground (*Chamberlayne* v. *Brockett* (1872), L.R. 8 Ch. 206, 211).

The interest of this case in relation to *Re Chardon* is that it shows that a gift of income for an indefinite period subject to a gift over, if impressed with a trust, offends against the rule against inalienability, as it is impossible in such circumstances for the donee to combine with the person entitled subject to the donee's interest in order to dispose of the subject-matter of the gift.

In *Re Chambers* (which was heard immediately after *Re Wightwick*) there was a gift of £800 by will upon trust to invest and pay the income to the British Union for the Abolition of Vivisection during such time as the union should keep a certain grave in repair, and on failure to do so to the Religious Tract Society so long as they should keep the grave in repair. There was no further gift over, but the will contained a gift of residue. Counsel for the residuary legatees could find nothing in the context of the will to distinguish the primary gift from that in *Re Chardon*, and this gift was therefore held to be valid. As to the gift over, Wynn Parry, J., held that the reasoning applied in *Re Wightwick* applied also in this case, and the gift over was therefore invalid.

The invalidity of the gift over was due, therefore, to its contingent character and not to the fact that it was itself subject to a limitation: it would have been just as invalid in this context if it had been a gift, *simpliciter*, to the Religious Tract Society. But as the gift over was invalid, the persons who would become entitled on the determination of the primary gift (if that should ever occur), and who would therefore be the persons who would be in a position, before the determination of the primary gift, to join with the primary donees for the purpose of alienating the subject-matter of the gift (this being an essential element in satisfying the rule against inalienability, as *Re Chardon* showed) would in this case be not the donees under the gift over, but the residuary legatees.

Now in *Re Chardon* the persons entitled under the gift over and the persons entitled as residuary legatees were treated as the same persons, but in fact, as the note on the case in "Tudor" already referred to shows, they were not the same. If *Re Chardon* was, then, wrongly decided on this point (and if this was so, the mistake appears to have been due to an admission of counsel, as Wynn Parry, J., has now pointed out in *Re Wightwick*), *Re Chambers* is now available as an authority on the same point unblemished by any possibility of mistake in this respect; and the gravamen of the criticism of *Re Chardon* in "Tudor" has lost everything but an historical interest. But there is one further point in regard to the combined effect of these cases which deserves notice. In *Re Chambers* the gift, after the gift over had been held invalid, was in effect a gift of income to X during an indefinite period. On the failure of this gift the residuary legatee would become entitled to the fund. As it happened, both in *Re Chardon* and in *Re Chambers*, the residuary legatees were charities, but this was an accidental and not a material circumstance; the rule against perpetuities does not apply to the interest of a residuary legatee, whose interest the law regards as always vested (*Re Randell* (1888), 38 Ch. D. 213). If therefore a testator is minded to confer a benefit subject to defeasance in an uncertain event (such as failure by the donee to perform a specified duty), these cases show that it can be done quite simply. Perhaps it is as well for the national economy that this did not become clear in the days when an almost Chinese veneration for ancestral tombs was part of the social character of the English people; but even now testators not infrequently give instructions for the upkeep of graves, and the recent decisions open the way to the gratification of their wishes.

"A B C"

Landlord and Tenant Notebook

RESCISSION AFTER COMPLETION

One of the questions discussed in *Solle* v. *Butcher* [1950] 1 K.B. 671 (C.A.) was whether the remedy of rescission is available, in the absence of fraud, to a party induced by misrepresentation to enter into a lease under seal. The case was decided on another point, the majority of the court holding that the parties had been under a common mistake of fact as to the identity of the premises with war-damaged premises which had had a standard rent, and the plaintiff, as described in the (first) article on "Two Aspects of Mistake," which appeared in our issue of 22nd July (94 Sol. J. 465), succeeded on this ground. On the question of alleged misrepresentation the court was indeed not agreed that the evidence warranted a finding that the defendant had misrepresented the status of the dwelling-house; but apart from that, there was an interesting divergence of opinion on the question whether *Angel* v. *Jay* [1911] 1 K.B. 666 was still good law.

In *Angel* v. *Jay* a county court judge had ordered the rescission of a lease under seal on the ground of innocent misrepresentation by the defendant landlord that the drains of the demised house were good. The Divisional Court held that the court below had exceeded its jurisdiction because the value of the property (though not that of the defendant's interest) exceeded the £500 limit prescribed by the County Courts Act, 1888, s. 67 (jurisdiction in certain equitable matters); but both judges also allowed the appeal on the ground that rescission was not available at all. According to Darling, J., this was because the contract had been executed, because it had been completed; and the plaintiff had gone into possession. It is not too clear whether the *ratio decidendi* is the execution of the lease under seal or the fact that nothing remained to be done—which would cover an oral agreement or parol contract as well. Bucknill, J.'s judgment first limits itself to "after completion"; but he cited an authority, *Kennedy* v. *Panama, New Zealand and Australian Royal Mail Co.* (1867), L.R. 2 Q.B. 580, in which Blackburn, J., distinguished, not between completed and uncompleted contracts, but between difference in substance and other differences, holding that unless there was virtually a failure of consideration there could be no remedy for innocent misrepresentation.

In *Solle* v. *Butcher*, Bucknill, L.J., made no observations on the validity or otherwise of *Angel* v. *Jay*; Jenkins, L.J. (who, like Bucknill, L.J., thought there was little or no evidence of any misrepresentation of fact), was content to say: "... it has been repeatedly held that an innocent misrepresentation affords no sufficient ground for rescission after completion, and there is authority for the view that this applies to a lease no less than a conveyance"; but Denning, L.J., devoted a good deal of research to the matter and came to the conclusion that, not only was there a good deal to be said for the view that the lease was induced by an innocent material misrepresentation, but that the fact that it had been executed was no bar to relief.

The attack on *Angel* v. *Jay* was an indirect one. Darling, J., in arriving at the conclusion described above, had relied not only on *Legge* v. *Croker* (1811), 1 Ball & Bro. 506 (which was an Irish decision, but did concern a lease under seal), but also on *Seddon* v. *North Eastern Salt Co., Ltd.* [1905] 1 Ch. 326, the headnote to which runs: "The court will not grant rescission of an executed contract for the sale of a chattel or chose in action on the ground of an innocent misrepresentation." The subject-matter of the sale examined was shares, so presumably an instrument under seal had been executed; the same applies to most of the transactions which figured in older decisions cited by Joyce, J., which were conveyances; but it does not appear that the learned judge based his decision on the form taken; the judgment reads as if what mattered was the fact that a transfer of proprietary rights had been completed, rather than the manner in which it was completed; and, when citing the one case which did not concern a conveyance of real property, that of *Kennedy* v. *Panama, New Zealand and Australian Royal Mail Co.*, already mentioned (an action by a shareholder who complained of a misleading prospectus: the court actually held that the misstatement did not "go to the root"), he quoted a passage from the judgment of Blackburn, J., which included: "For example, where a horse is bought under a belief that it is sound, if the purchaser was induced to buy by a *fraudulent* representation as to the horse's soundness, the contract may be rescinded. If it was induced by an *honest* misrepresentation as to its soundness ... yet the purchaser must pay the whole price, unless there was a warranty; and even if there was a warranty, he cannot retain the horse and claim back the whole price, unless there was a condition to that effect in the contract." Which suggests that the presence or absence of a seal was not, in Darling, J.'s view, a decisive factor.

But the observations in *Seddon* v. *North Eastern Salt Co.*, said Denning, L.J., had lost all authority since Scrutton, L.J., threw doubt on them in *Lever Bros., Ltd.* v. *Bell* [1931] 1 K.B. 557 (C.A.). Scrutton, L.J.'s short reference to the decisions in *Seddon* v. *North Eastern Salt Co.* to the *Kennedy* v. *Panama, etc., Co.*, does, indeed, express his view that in so far as the latter decision laid down that rescission was never available for innocent misrepresentation, it was, by reason of the fusion of law and equity (equity to prevail) in the Judicature Acts, no longer law; as regards the first-mentioned decision (arrived at since that fusion), Scrutton, L.J., "reserved liberty to consider" it. And it is right to say that this part of Scrutton, L.J.'s judgment did not come in for any criticism in the House of Lords, where the judgment of the Court of Appeal was set aside. But a reservation of liberty to consider one of the props of *Angel* v. *Jay* may not seem a very strong reason for saying that the latter is no longer good law.

Denning, L.J., also referred, however, to *Mackenzie* v. *Royal Bank of Canada* [1934] A.C. 468, in which the Privy Council decided that a guarantee with a pledge of securities which a woman had been induced to make by an innocent misrepresentation could and should be set aside. This the learned lord justice put forward as an actual instance of the feat having been accomplished. Perusal of the report shows, however, that the respondents' argument urged the impossibility of, as it were, unscrambling eggs rather than non-availability of the remedy; it was impliedly conceded that if the parties could be restored to their former position a court might rescind an executed agreement, and what happened was that the Judicial Committee decided that such restoration could be carried out, the respondents to pay the appellant dividends received in the meantime. Further, and what may be more important for present purposes, the contract was entered into by signing "the bank form of general hypothecation," and it is nowhere mentioned that this demanded a seal if, indeed, the laws of Ontario distinguish between parol contracts and specialties.

The result is that it is now more difficult than ever for a practitioner to advise, say, a farmer who complains that he has been induced to take a yearly tenancy of a farm by an innocent misrepresentation which his landlord made, during negotiation, about the water supply. I would suggest, however, that in view of Denning, L.J.'s strictures, it would now be safe to say that such a tenancy agreement can be rescinded though the client has "gone into possession," and that Darling, J.'s objection to rescission in *Angel* v. *Jay*, in so far as it was based on such a circumstance, is no longer valid. But, though Jenkins, L.J., does not expressly refer to the seal distinction when approving *Angel* v. *Jay*, I believe that he had this in mind when using the saying, "an innocent misrepresentation affords no sufficient ground for rescission after completion," the last word indicating the delivery of a sealed and signed document. Denning, L.J., did not refer to this aspect of the matter; and if the hypothetical farmer had taken a seven-year lease by executing such a document he would be up against an established principle which might prove too strong for him.

R. B.

HERE AND THERE

CONTRACT SENSATION

FREED for a little while, by the intervention of this shorter Long Vacation, from the responsibilities of major litigation imminently impending, there is a chance for us to cast a backward glance at the term that is gone. So far we have, somewhat surprisingly, heard but little comment on the probable effects of the decision of the Court of Appeal (Denning, L.J., delivering judgment, Bucknill, L.J., and Roxburgh, J., concurring) in *British Movietonews, Ltd.* v. *London and General Cinemas, Ltd.* [1950] W.N. 334; 94 SOL. J. 504. It is only about a month and a half old (which is practically mint-new in case law) and doubtless when it has been more amply reprinted and widely circulated we will hear a good deal more of it, unless, of course, the parties choose to march forward to the House of Lords, there to challenge an unknown destiny. For the moment the more sensational forecasts of its repercussions suggest that it has cut the whole foundation from beneath the stately fabric of the law of contract. Briefly, what the court did was to qualify the literal words of a contract so as to exclude from them a turn of events completely uncontemplated by the parties. This did not mean, the learned lord justice hastened to add, that the court no longer insisted on the binding force of contracts deliberately made. It only meant that it would

not allow the words in which they happened to be framed to become tyrannical masters. It no longer credited the party with the foresight of a prophet or his lawyer with the draftsmanship of a Chalmers. In short, it made allowances for human limitations. Fair enough: and the non-alarmists say that all contracts must be understood *rebus sic stantibus* and that no doubt the whole idea accords with the ancient principles of the Law Merchant. Others, looking at the possibilities from a far lower level, ask what contract ever runs its course without running into unforeseen circumstances at one time or another and cry contractual chaos when every county court judge gets busy with his own conceptions of qualification. Not that the lawyers need feel any personal anxiety. It would all be good for business. The parties could do the worrying.

SHORTER TEMPERS

ANOTHER of the term's happenings (to step on to another level) which has, oddly enough, raised barely a ripple on the surface of Temple life, was the much publicised translation of a member of the Bar from active practice to serial contributions to a Sunday newspaper. The lure of law life never fails to draw the Fleet Street customers and even learned judges have been induced to pipe the tune for their edification. Meanwhile, pending the printed revelation no one seems to know precisely what it was that the barrister actually did say to the learned Commissioner at Chelmsford. Generally speaking, the last few months seem to have produced some evidence that tempers are being worn shorter in the courts this year—either that or some of the robustness of the good old days is coming back into our hitherto decorous lives. There was the trouble over a cross-examination at Leeds Assizes on which the Middle Temple Benchers were called upon to adjudicate. There was the Divorce Court fracas over an interview between counsel and witness. And there was that memorable scene in the Chancery Division when the venerable judge so strenuously and emphatically objected to the forensic feat of condensation that summarised the correspondence of the defendant's solicitors in the rather too highly coloured sentiment "sue and be damned." One of the very rare occasions when an advocate has been told to leave the court, the incident closed, I am told, in a glow of mutual expressions of goodwill.

NAVAL—LEGAL

PERHAPS the following ranks as a "chestnut" or maybe it is less well known among the landlubbers than among those who went down to the sea in ships during the late hostilities. Anyhow, the promotion of the hero of it to a magistracy (a static situation after the hazards of a life on the ocean wave in time of war) provides an excellent excuse for repeating it. In the course of his temporary naval career (during which, incidentally, he collected a D.S.O.) he found himself in command of a very small vessel. Came a day when he came into the vicinity of one of the more massive units of the Fleet. Up shot the signal to her: "Are you happy in your work?" Back from offended dignity came an answering signal: "State name, rank and seniority of your commanding officer." Reply: "Leo Gradwell, barrister-at-law, Inner Temple, 1925." RICHARD ROE.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CERTIORARI: "PERSON OR TRIBUNAL": "REASONABLE CAUSE TO BELIEVE"

Ali *v.* Jayaratne

Lord Porter, Lord Oaksey, Lord Radcliffe, Sir John Beaumont and Sir Lionel Leach. 29th June, 1950

Appeal from the Supreme Court of Ceylon (Canekeratne, J.).

The appellant obtained a rule *nisi* calling on the respondent, the Controller of Textiles in Ceylon, to show cause why a writ of certiorari should not issue for the quashing of an order which the controller had made cancelling the appellant's licence to act as a dealer in textiles, under reg. 62 of the Defence (Control of Textiles) Regulations, 1945, which provided that "where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer," he might cancel his licence. Canekeratne, J., discharged the rule on the merits of the case. Having regard to the decision of the Full Bench in *Abdul Thassim* v. *Edmund Rodrigo* (*Controller of Textiles*) (1947), 48 C.N.L.R. 121, it was not open to the judge to consider either the question whether s. 42 of the Ceylon Courts Ordinance, 1938, gave the court power to direct the prerogative writs to a person such as the controller, or the question whether a controller of textiles acting under the powers of reg. 62 was acting in a capacity which would make him amenable to certiorari even supposing that he came within the words "or other person or tribunal" stated in s. 42 to be permissible subjects of certiorari. The dealer appealed.

LORD RADCLIFFE, delivering the judgment of the Board, said that they agreed with the decision of the Full Bench in *Abdul Thassim's* case, *supra*, that the controller of textiles was not excluded from the ambit of s. 42 on the proper construction of the words "other person or tribunal." The next question was whether it would be "according to law" that he should be amenable to certiorari when he purported to act under reg. 62. It was held in *Abdul Thassim's* case, *supra*, that he was so amenable. The foundation of the Supreme Court's reasoning on that point was to be found in Howard, C.J.'s, sentence: "The fact that he can only act when he has 'reasonable grounds' indicates that he is acting judicially and not exercising merely administrative functions." It would be impossible to consider the significance of such words as "Where the controller has reasonable grounds to believe . . . " without taking account of the decision of the House of Lords in *Liversidge* v. *Anderson* [1942] A.C. 206; 85 SOL. J. 439 which directly involved the meaning of the words: "If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations . . ." The decision of the majority of the House laid down that those words in that context meant no more than that the Secretary of State had honestly to suppose that he had reasonable cause to believe the required thing. On that basis, granted good faith, the maker of the order appeared to be the only possible judge of the conditions of his own jurisdiction. They (their lordships) did not adopt a similar construction of the words in reg. 62 now in question. It would be very unfortunate if *Liversidge's* case, *supra*, came to be regarded as laying down any general rule as to the construction of such phrases in statutory enactments. It was an authority for the proposition that the words "if A B has reasonable cause to believe" were capable of meaning "if A B honestly thinks that he has reasonable cause to believe," and that in the context and surrounding circumstances of Defence Regulation 18B they did in fact mean just that. But there was no general principle that such words were to be so understood; and the dissenting speech of Lord Atkin served as a reminder of the many occasions when they had been treated as meaning "if there is in fact reasonable cause for A B so to believe." They (their lordships) treated the relevant words in reg. 62 as imposing a condition that there must in fact exist such reasonable grounds, known to the controller, before he could validly exercise the power of cancellation. But it did not follow necessarily from that

that the controller must be acting judicially in exercising the power. Certiorari did not lie here. The characteristic which the controller lacked was the duty to act judicially (see *per* Lord Hewart, C.J., in *R.* v. *Legislative Committee of the Church Assembly* [1928] 1 K.B. 411, at p. 415). When he cancelled a licence he was not determining a question, he was taking executive action to withdraw a privilege because he believed, and had reasonable grounds to believe, that the holder was unfit to retain it. *Abdul Thassim's* case, *supra*, was wrongly decided on that point. Appeal dismissed.

APPEARANCES: *Stephen Chapman* (*Darley, Cumberland and Co.*); *Sir David Maxwell Fyfe*, K.C., and *J. G. Le Quesne* (*Burchells*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HOUSE OF LORDS

EXCESS PROFITS TAX: GRAMOPHONE RECORD COMPANY

Electrical & Musical Industries, Ltd. *v.* Inland Revenue Commissioners

Lord Simonds, Lord Normand, Lord Morton of Henryton, Lord MacDermott and Lord Reid

23rd June, 1950

Appeal from the Court of Appeal.

The appellant company were assessed to excess profits tax in the sum of £200,000 in respect of the business of The Gramophone Co., Ltd., for the chargeable accounting period ending on 30th June, 1944. The Gramophone Co., Ltd., were at all material times a subsidiary of a group of companies, of which the appellant company were the principal, within the meaning of s. 17 (6) of the Finance (No. 2) Act, 1939, and s. 28 (1) of the Finance Act, 1940. The parent company were accordingly assessable to excess profits tax in respect of the business of the subsidiary company under para. 2 of Pt. I of Sched. V to the Act of 1940. The parent company appealed against the assessment, the sole question being whether a sum of £17,265 17s. 1d. received by the subsidiary company from a company called Phonographic Performance, Ltd., in respect of that company's year ending on 31st May, 1944, was income from an investment within the meaning of para. 6 (1) of Pt. I of Sched. VII to the Act of 1939 and was therefore to be excluded from the profits of the subsidiary company for the purpose of the assessment of those profits on the parent company. In order to secure copyright protection and to co-ordinate the arrangements for granting licences for the public performance of their gramophone records, manufacturers, including the subsidiary company, caused the Phonographic company to be incorporated under the Companies Act, 1929, as a company limited by guarantee and not having a share capital. The parent company and the subsidiary company were members at all material times. The objects of the Phonographic company were, broadly speaking, to protect the member companies' copyrights, granting licences for reproduction of their records, etc. The Court of Appeal, affirming Singleton, J., held that the sum received by the subsidiary company from the Phonographic company was not income received from an investment. The parent company appealed. The House took time for consideration.

LORD SIMONDS said that the Phonographic company, though a separate legal entity from its members, were formed to act and did act as agent for them on terms which they agreed with the company and each other. He (his lordship) adhered to the view which was the basis of the decisions in *Gas Lighting Improvement Co., Ltd.* v. *I.R.C.* [1923] A.C. 723, and *Tootal Broadhurst Lee Co., Ltd.* v. *I.R.C.* (1949), 93 SOL. J. 132; 29 Tax Cas. 352, that ultimately the test must be which (if any) of a company's assets, having regard to the nature of the trade carried on by the assessed subject, a business man would regard as an investment. He (his lordship) could not suppose that such an interest as the subsidiary company had in the Phonographic company would be so described by him. Those decisions did not involve that the shares in any and every company limited by shares, much less the interest of a member in a company limited by guarantee, must necessarily be regarded as an investment.

The other noble lords concurred. Appeal dismissed.

APPEARANCES: *Grant*, K.C., *Philip Sykes* and *G. Tribe* (*Broad & Son*); *Sir Frank Soskice*, K.C. (Solicitor-General), *King*, K.C., *J. H. Stamp* and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SHIPPING: SHIP AGROUND IN HARBOUR

"The Towerfield"

Lord Porter, Lord Normand, Lord Oaksey, Lord Morton of Henryton and Lord Radcliffe. 30th June, 1950

Appeal from the Court of Appeal ([1949] P. 10; 92 SOL. J. 555).

In October, 1941, a steamship belonging to the plaintiffs stranded while entering Workington Harbour in the charge of a Trinity House pilot, pilotage being compulsory for that harbour. The result of the stranding was that the ship broke her back and that damage was occasioned to the defendants, Workington Dock and Harbour Board. The board had published details of their harbour in an inset plan in the Admiralty chart for the coast of Cumberland. By s. 74 of the Harbours, Docks and Piers Clauses Act, 1847, shipowners "shall be answerable to the undertakers for any damage done by" their vessel. By s. 15 (1) of the Pilotage Act, 1913, ". . . the owner . . . of a vessel navigating under" compulsory pilotage "shall be answerable for any loss . . . caused by any . . . fault" in the navigation of the vessel just as "if the pilotage were not compulsory." Willmer, J., dismissed the claim by the shipowners for damage to their ship, and awarded damages on the counter-claim by the board for damage suffered by them. The Court of Appeal—Scott and Asquith, L.JJ., Bucknill, L.J., dissenting—reversed that decision, and the board now appealed. The House took time for consideration.

LORD PORTER said that both the pilot and the board had been negligent, the latter in failing to give him full information. Were the shipowners infected with the wrongdoing of the pilot? And did "answerable" in s. 15 (1) of the Act of 1913 mean more than that the damage, whether done to or by the ship, was the owner's responsibility, or was it confined to damage done by the ship? In its context "answerable" would not naturally convey the suggestion that, although the shipowner was liable for any damage done by the pilot's fault, yet he could recover his own damage in full. "Answerable" meant responsible and a shipowner who, through a compulsory pilot, was responsible for faulty navigation was responsible for damage to his own ship as well as for injury to the property of another. The Act attributed to shipowners liability for the fault of a compulsory pilot in all cases and there was no ground for differentiating between contract and tort. There remained the contention by the board that, though their negligence might be one of the causes of the disaster, yet they could recover by reason of s. 74 of the Act of 1847. In *Great Western Railway Co.* v. *"Mostyn"* (*Owners*) [1928] A.C. 57, the House of Lords took the view that a shipowner was responsible for damage done to harbour works, whether he was in fault or not, save in a case similar to *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743. Fine distinctions should not be introduced which would limit the generality of that decision. The damages should, however, be limited to those directly caused to the harbour and should not embrace any loss of revenue which the board had suffered.

LORD NORMAND, LORD MORTON OF HENRYTON and LORD RADCLIFFE agreed.

LORD OAKSEY dissented. Appeal allowed.

APPEARANCES: *D. N. Pritt*, K.C., *R. F. Hayward*, K.C., and *C. F. Fletcher-Cooke* (*Thomas Cooper & Co.*); *K. Carpmael*, K.C., *J. V. Naisby*, K.C., and *G. N. W. Boyes* (*Constant and Constant*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FALL OF TREE ON MOTOR CAR: LANDOWNERS' LIABILITY

Caminer and Another *v.* Northern & London Investment Trust, Ltd.

Lord Porter, Lord Normand, Lord Oaksey, Lord Reid and Lord Radcliffe. 10th July, 1950

Appeal from a decision of the Court of Appeal ([1949] 2 K.B. 64; 93 SOL. J. 287) reversing Lord Goddard, C.J. (92 SOL. J. 720).

While the plaintiffs were driving in their motor car along a road in St. John's Wood, an elm tree on the defendants' land fell on the car, inflicting on them injuries in respect of which they brought this action. A strong, gusty wind was blowing. The tree was 120 to 130 years old and had for some time been affected with butt rot, a disease which there was nothing in the tree before the fall to indicate. It had a 35-feet crown, not having been trimmed or lopped for many years. Lord Goddard, C.J., found that the fall was due to the wind, the disease and the large crown, and held that it was a reasonable and proper precaution for the defendants to top or pollard their elm trees as an ordinary incident of good estate management, but that they did not realise their duty, so that the plaintiffs were entitled to the agreed damages of £550 and £850, respectively. The Court of Appeal allowed the defendants' appeal, holding that the real cause of the accident was the presence of elm butt rot, which disease had taken an unusual course, with the result that there was nothing to indicate its presence to a layman or expert, and that the evidence was insufficient to establish that the defendants' conduct had fallen short of the standard to be expected from a reasonable landowner of property adjoining a public highway. The plaintiffs appealed. The House took time for consideration.

LORD PORTER said that he could not accept the view that the defendants were negligent merely because they failed to call in an expert to advise as to the possible existence of an unsuspected and undiscoverable disease, even though an expert, if called in, might have recommended topping and lopping. The issue was broader and more general: in the case of an apparently healthy elm, obviously of mature age but by no means old, ought its owners to have it lopped and topped? Or should they, at any rate, have called in an expert to advise them as to its treatment, and was that course the more imperative in the case of a tree standing near a public and well-used road? If it were the duty of every owner of an elm near a road to lop and top it as soon as it reached early middle age, however sound it was found on external examination, the defendants were negligent; but, short of that, in the circumstances of the present case, they were free from blame, whether the case against them were framed in negligence or nuisance.

The other noble lords agreed. Appeal dismissed.

APPEARANCES: *N. R. Fox-Andrews*, K.C., and *W. R. Rees-Davies* (*G. Howard & Co.*); *F. W. Beney*, K.C., and *R. M. Everett* (*Barlow, Lyde & Gilbert*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

HUSBAND AND WIFE: HUSBAND'S LETTER TO PROBATION OFFICER

Mole *v.* Mole

Bucknill, Somervell and Denning, L.JJ. 13th June, 1950

Appeal from Mr. Commissioner Bush James, K.C.

The appellant wife petitioned for divorce alleging cruelty and desertion on the part of the respondent, her husband. The case is reported only in reference to the parties' consultation of the probation officer. While they were separated the wife consulted a solicitor and, on his advice, went to the police court. On the advice received there, she consulted the probation officer, who wrote to the husband. The husband put that letter into an envelope, and wrote on it, "I have not changed my mind," and left it at the house where the wife had resided. But he also answered the probation officer's letter. At the trial the husband took the objection, when the probation officer was called, that his letter answering the officer was privileged in accordance with the opinions given by two lords justices in *McTaggart* v. *McTaggart* [1949] P. 94; 92 SOL. J. 617, but the commissioner ruled that it was not privileged.

BUCKNILL, L.J., said that in his opinion the letter was privileged and should not have been admitted in evidence. It was argued for the wife that the opinions expressed in *McTaggart* v. *McTaggart*, *supra*, only applied when both sides had accepted the probation officer as a conciliator between them; but he (Bucknill, L.J.) did not think that that was what had been intended in those opinions. The dispute here had reached the stage where litigation was imminent; the wife had seen a solicitor; the parties had been living apart for two years, and there was no reasonable prospect of their living together. If the husband, instead of writing the letter, visited the probation officer and said what he in fact wrote, it would be impossible to argue that, under the rule in *McTaggart* v. *McTaggart*, *supra*, that statement would not be privileged. The principles there stated should be applied here. It was essential, if a reconciliation was to be attempted with the probation officer as intermediary, that statements made by either party, as soon as he was asked to act in that capacity, should be treated as privileged. Counsel suggested that if that principle were applied at such an early stage as in this case it would tend to prejudice the working of the other principle, that a spouse was no longer in desertion if he or she had made a *bona fide* attempt to be taken back; and he argued that if such a *bona fide* attempt were made through a probation officer it ought to be taken into account. There was some force in that argument, but it must be borne in mind that in matrimonial disputes the State was also an interested party, and was more interested in reconciliation than in divorce; and if the rule or privilege tended to promote the prospects of reconciliation it ought to be applied, although it might make it difficult for the spouse in some ways to prove a *bona fide* attempt to return home. That difficulty could always be surmounted by the deserting spouse's writing a suitable and *bona fide* letter and sending it by registered post to the deserted one.

SOMERVELL and DENNING, L.JJ., agreed. Appeal allowed on the merits. New trial ordered.

APPEARANCES: *S. Seuffert* (*Smiles & Co.*); the husband appeared in person.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE: WANT OF KNOWLEDGE AND APPROVAL

In re Preston, deceased

Tucker, Asquith and Jenkins, L.JJ. 19th June, 1950

Appeal from Wallington, J.

The defendant, the testator's son, in opposition to the propounding of a will by the plaintiffs, alleged absence from the testator's mind of knowledge and approval of the contents of the will, and in a supporting paragraph in the substance of the defence referred to the testator's having had to take insulin and to threats made by a beneficiary under the will, who had acted as his nurse, to leave him to his fate. By r. 40A of the

Contentious Rules of the Probate Court a plea of absence of knowledge and approval may not be supported in the substance of the case by any other defence available under the rule (for example, undue influence) unless that defence is also pleaded. Wallington, J., accordingly struck out the supporting paragraph. The defendant appealed.

TUCKER, L.J., said that r. 40A was designed to prevent, for instance, a party from setting up, under the plea of lack of knowledge and approval, matter which was relevant to a case of undue influence or fraud. It was said that that was exactly what this substance of case did: that, read as a whole, it must be intended to allege that the beneficiary in question had exercised undue influence over the testator, or that she was party to some fraud in connection with his will. It was argued for the defendant that, notwithstanding what was a well-known principle of practice, where there was a matter which tended to excite the suspicion of the court in connection with the preparation or execution of a will, that matter should be brought to the notice of the court; and counsel relied on the statements of Parke, B., in *Barry* v. *Butlin* (1838), 2 Moo. P.C. 480, and of Lindley, L.J., in *Tyrrell* v. *Painton* [1894] P. 151. The question therefore was whether there was anything in the substance of the case here which could properly be said to excite the suspicion of the court in connection with the preparation or execution of the will. Certain matters were set out which were clearly irrelevant and in fact tended to be vexatious in the absence of any allegation of fraud or undue influence, namely, the words concerning insulin, and the threats to leave the deceased. If the defendant had confined himself simply to a statement that the beneficiary had been present when instructions for the will were given to the testator's solicitors and when the will was executed, it might have passed, although it would be wrong for that court to say that there was anything suspicious in the mere fact that a person benefiting under a will was present when the testator was giving his instructions to his solicitor: that would be going far beyond *Barry* v. *Butlin*, *supra*, and *Tyrrell* v. *Painton*, *supra*. But the substance of the case had to be looked at as a whole, and the statements about the preparation of the will followed the allegations about insulin and threats and the relationship of the beneficiary to the deceased in such a way as to indicate that the real case made against her was in effect one of fraud or undue influence. There was no ground which would justify that court in saying that the judge had wrongly exercised his discretion.

ASQUITH and JENKINS, L.JJ., concurred. Appeal dismissed.

APPEARANCES: *S. E. Karminski*, K.C., and *R. J. A. Temple* (*Peacock & Goddard*); *William Latey*, K.C. (*Taylor, Jelf and Co.*); *Gerald Gardiner*, K.C., and *C. A. Marshall-Reynolds* (*Shaen, Roscoe & Co.*) (beneficiary); *W. W. Stabb* (*W. R. Bennett & Co.*) (testator's daughter).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVORCE: DISPENSING WITH SERVICE

Paolantonio *v.* Paolantonio*

Tucker, Asquith and Jenkins, L.JJ. 19th June, 1950

Appeal from Wallington, J., in chambers.

The appellant, an Englishwoman, married an American soldier in England in 1944. The husband became tired of the marriage and returned to America. He wrote letters from his mother's address there declaring his intention of never living with his wife again. The wife petitioned for divorce for desertion and sent a copy of the petition and all the other necessary documents to the husband at his mother's address. The mother returned the documents, saying that her son had left home, that she did not know his whereabouts and that she had herself advertised in vain to find out where he was. Wallington, J., dismissed the wife's application under s. 42 of the Matrimonial Causes Act, 1857, that the court should "dispense with such service [of the petition] altogether in case it shall seem necessary or expedient so to do." The wife appealed.

TUCKER, L.J., said that it was essential to our system of justice that parties to suits should be made aware that suits were being brought against them. That was of supreme importance in matters like divorce, which involved the status of parties and the lives of children. The fullest inquiries therefore must always be made and the circumstances must be exceptional before the court was justified in dispensing with the service of a petition. Here, actual service being impossible, the only possible substituted service would be advertisement in some newspaper. That would necessarily be not only very expensive and extensive, but a pure farce. The question, then, was whether there was in the authorities anything to prevent the judge, in the exercise of his discretion, from dispensing with a form of service which on the face of it would be expensive and useless. He (his lordship) found it impossible here to draw the inference that the husband must know that by now proceedings for divorce had been instituted against him. But the requirements laid down in *Luccioni* v. *Luccioni* [1943] P. 49 were not all-embracing, and there must remain other cases, exceptional, no doubt, of which the present was one, where a judge had a discretion under s. 42 to dispense with service notwithstanding that all the requirements suggested by Lord Merriman, P., in the case cited were not present. That, he thought, followed from the decision of the Court of Appeal in that case. Once the court was satisfied, as he was here, that the only suggested method of substituted service not only was beyond the means of the applicant, but would be ineffective, justice required that the court should exercise its discretion to dispense with service.

ASQUITH and JENKINS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *H. G. Garland* (*C. W. Davenport, The Law Society Services Divorce Department*).

*Reporter's note: cf. *Heath* v. *Heath* (1950), *ante*, p. 319; 66 T.L.R. (Pt. I), 1093.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVORCE: CRUELTY

Kaslefsky *v.* Kaslefsky

Bucknill, Somervell and Denning, L.JJ.
20th June, 1950

Appeal from Judge Alun Pugh, sitting as a Divorce Commissioner.

The appellant husband petitioned for divorce on the ground of cruelty. The parties were married in 1942. In 1943 their son was born. In September, 1943, the husband went overseas with the forces. He gave evidence that in October, 1944, he received a letter from his wife, which was not produced, implying that she wanted her freedom and wished their son to be adopted. He was repatriated suffering from anxiety neurosis. The commissioner dismissed the petition, and the husband now appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., said that the first charge against the wife raised the question (which ran through the whole of the case) whether a wife who wrote a letter such as that which she wrote in 1944, provided that she meant it, was treating her husband cruelly if she were honestly weary of him and of married life and wanted to be free. Reprehensible though such conduct might be from the matrimonial point of view, he (his lordship) could not hold that it amounted to cruelty. Next, the husband complained that, after his return from abroad, his wife refused him marital intercourse. Whether that conduct constituted cruelty again depended on the wife's motive in the particular case. If she had arrived at a state of mind, while her husband was overseas, such as to make him repugnant to her sexually, she was justified in declining marital intercourse. It might be that, in so declining, she was not complying with her matrimonial vows; but to describe as cruelty a wilful refusal due to a feeling of repugnance was a misuse of the word. If, on the other hand, the wife had refused merely because she wished to inflict pain and suffering on her husband, the matter would have worn a different complexion. But there was

no evidence of that. Thirdly, it was complained that the wife did no work in the house. They were living in the house of the wife's mother, who did all the cooking and cleaning because the wife would not do it. The same observations applied to that conduct of the wife as to the preceding causes of complaint. The fourth complaint, which had rather more substance, was that the wife neglected the child; did not keep him clean, and kept him up late in the evenings, so that the husband used to put him to bed, and to wash and bathe him. *Birch* v. *Birch* (1873), 28 L.T. 540, a quite different case on its facts, contained a clear statement that a father's brutality to a child was not cruelty to the wife unless it were committed in order to wound her feelings in such a way as to injure her health. The question was whether that decision had been enlarged by *Squire* v. *Squire* [1949] P. 51; 92 SOL. J. 323. He did not think that it had. Refusal of marital intercourse, sheer laziness, neglect of the child—all that was innocent so far as any charge of cruelty was concerned, unless done with the purpose of injuring the husband, however reprehensible it might be from the matrimonial point of view. Section 2 of the Matrimonial Causes Act, 1937, introducing a new expression, required the respondent to have "treated the petitioner with cruelty." This wife was not guilty of cruelty because she was not guilty of conduct aimed at her husband which had produced injury to his health or reasonable apprehension of it. The appeal should therefore be dismissed.

SOMERVELL, L.J., agreed.

DENNING, L.J., said that in *Westall* v. *Westall* (1949), 65 T.L.R. 337, the Court of Appeal said that an essential element in cruelty was that there must be conduct which was in some way aimed by one person against another. The present case involved the application of that principle to sets of circumstances frequently encountered; gross neglect and refusal of marital intercourse. The petition here was rightly dismissed, though it might be a good thing if there were a divorce, for the wife was in complete disregard of her matrimonial duties. But if the door of cruelty were opened too wide the courts would soon find themselves granting divorce for incompatibility of temperament, and the institution of marriage would be imperilled. Appeal dismissed.

APPEARANCES: *S. E. Karminski*, K.C., and *J. E. S. Simon* (*Montagu's and Cox & Cardale*); the wife did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Aberdeen and District Milk Marketing Scheme (Application to Banff) Order, 1950. (S.I. 1950 No. 1286.)

Agriculture Act (Extension of First Schedule) (Wool) Order, 1950. (S.I. 1950 No. 1262.)

British Commonwealth and Foreign Parcel Post Warrant, 1950. (S.I. 1950 No. 1200.)

Burgh of Kelso Water Order, 1950. (S.I. 1950 No. 1289.)

Census Order, 1950. (S.I. 1950 No. 1269.)

Census of Distribution (1951) (Restriction on Disclosure) Order, 1950. (S.I. 1950 No. 1245.)

Civil Defence (Demolition and Repair Services) Regulations, 1950. (S.I. 1950 No. 1258.)

Civil Defence (Police) (Training) Regulations, 1950. (S.I. 1950 No. 1204.)

Coal Industry Nationalisation (Valuation) (Amendment) Regulations 1950. (S.I. 1950 No. 1265.)

Coal-Mining (Subsidence) (Notices) Regulations, 1950. (S.I. 1950 No. 1271.)

See *ante*, p. 509, and *post*, p. 522.

Control of Leather (Revocation) Order, 1950. (S.I. 1950 No. 1209.)

Control of Turbo-Alternators (No. 2) (Revocation) Order, 1950. (S.I. 1950 No. 1221.)

Controlled Bodies (Compensation to Employees) Regulations, 1950. (S.I. 1950 No. 1246.)

County Court (Amendment) Rules, 1950. (S.I. 1950 No. 1231.)

These rules, which come into effect on 1st September, make substantial alterations in the County Court Rules, 1936. Instead of the Lower Scale and Scale A, B and C rules as to costs, new scales are fixed, Scale 1 applying to claims of £2 to £10, Scale 2 to claims of £10 to £20, and Scale 3 to all claims exceeding £20. New tables are also introduced for fixed costs and for compensation to witnesses for loss of time.

County Court Funds Rules, 1950. (S.I. 1950 No. 1230.)

By the County Court Funds Rules, 1949, a person could obtain payment of money into and out of court by post only if he resided more than five miles from the court. The 1950 rules enable him to do so, at his own risk, irrespective of his place of residence.

Double Taxation Relief (Estate Duty) (Netherlands) Order, 1950. (S.I. 1950 No. 1197.)

Double Taxation Relief (Taxes on Income) (Denmark) Order, 1950. (S.I. 1950 No. 1195.)

Double Taxation Relief (Taxes on Income) (Netherlands) Order, 1950. (S.I. 1950 No. 1196.)

Draft Double Taxation Relief (Taxes on Income) (Ceylon) Order, 1950.

East Flintshire and East Denbighshire (Conservation of Water) Order, 1949. (S.I. 1950 No. 1248.)

Education (Local Education Authorities) Amending Grant Regulations No. 5, 1950. (S.I. 1950 No. 1252.)

Electricity (Severance Compensation) Regulations, 1950. (S.I. 1950 No. 1278.)

Exchange Control (Payments) (Italian Somaliland) Order, 1950. (S.I. 1950 No. 1249.)

Gas (Conversion Date) (No. 18) Order, 1950. (S.I. 1950 No. 1257.)

Gas (Severance Compensation) Regulations, 1950. (S.I. 1950 No. 1277.)

Gold Coast (Constitution) (Electoral Provisions) Order in Council, 1950. (S.I. 1950 No. 1267.)

Government of India (Family Pension Funds) (Amendment) Order, 1950. (S.I. 1950 No. 1198.)

Hydrocarbon Oils (Excise Duty) Regulations, 1950. (S.I. 1950 No. 1284.)

Import Duties (Exemptions) (No. 4) Order, 1950. (S.I. 1950 No. 1261.)

International Organisations (Immunities and Privileges of the Council of Europe) Order in Council, 1950. (S.I. 1950 No. 1268.)

Mental Deficiency (Amendment) Regulations, 1950. (S.I. 1950 No. 1225.)

Mental Treatment (Amendment) Rules, 1950. (S.I. 1950 No. 1223.)

Milk (Great Britain) (General Licence No. 2) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1234.)

Milk Marketing (Counties of Moray, Banff and Orkney) (Revocation) Order, 1950. (S.I. 1950 No. 1238.)

Mineral Oil in Food (Amendment) Order, 1950. (S.I. 1950 No. 1239.)

Motor Vehicles (Construction and Use) (Amendment) (No. 3) Regulations, 1950. (S.I. 1950 No. 1242.)

Motor Vehicles (Variation of Speed Limit) Regulations, 1950.

National Health Service (Appointment of Specialists) Regulations, 1950. (S.I. 1950 No. 1259.)

National Health Service (Apportionment of Hospital Endowments Fund) Amendment Regulations, 1950. (S.I. 1950 No. 1247.)

National Health Service (Designation of Teaching Hospitals—St. George's Hospital, King's College Hospital, and St. Thomas' Hospital) Order, 1950. (S.I. 1950 No. 1296.)

National Health Service (Emergency Mental Treatment) Amendment Regulations, 1950. (S.I. 1950 No. 1224.)

National Health Service (Expenses in Attending Hospitals) Regulations, 1950. (S.I. 1950 No. 1222.)

National Health Service (Expenses in Attending Hospitals) (Scotland) Regulations, 1950. (S.I. 1950 No. 1251.)

National Health Service (Functions of Regional Hospital Boards, etc.) (Amendment) Regulations, 1950. (S.I. 1950 No. 1260.)

National Health Service (Supplementary Ophthalmic Services) Amendment Regulations, 1950. (S.I. 1950 No. 1276.)

National Insurance (Residence and Persons Abroad) Amendment Regulations, 1950. (S.I. 1950 No. 1264.)

National Insurance (Seasonal Workers) Regulations, 1950. (S.I. 1950 No. 1220.)

North Lindsey Water Order, 1950. (S.I. 1950 No. 1275.)

North of Scotland Milk Marketing Scheme (Application to Moray and Orkney) Order, 1950. (S.I. 1950 No. 1287.)
Parish Meetings (Polls) (No. 2) Rules, 1950. (S.I. 1950 No. 1272.)
Petrol Substitutes Regulations, 1950. (S.I. 1950 No. 1285.)
Poisons List Order, 1950. (S.I. 1950 No. 1213.)
Poisons Rules, 1950. (S.I. 1950 No. 1214.)
Portsoy Town Council (Knock Water) Water Order, 1950. (S.I. 1950 No. 1290.)
Public Service Vehicles (Conditions of Fitness) (Amendment) (No. 2) Regulations, 1950. (S.I. 1950 No. 1240.)
Public Service Vehicles (Equipment and Use) (Amendment) Regulations, 1950. (S.I. 1950 No. 1241.)
Regulation of Movement of Swine Order, 1950. (S.I. 1950 No. 1302.)
Removal and Storage of Household Chattels Order, 1950. (S.I. 1950 No. 1219.)
Representation of the People Regulations, 1950. (S.I. 1950 No. 1254.)
Representation of the People (Northern Ireland) Regulations, 1950. (S.I. 1950 No. 1255.)
Representation of the People (Scotland) Regulations, 1950. (S.I. 1950 No. 1250.)
Seed Potatoes Order, 1950. (S.I. 1950 No. 1236.)
Slough Corporation Water Order, 1950. (S.I. 1950 No. 1291.)
Standing Passengers (Amendment) Order, 1950. (S.I. 1950 No. 1243.)
Stewartry of Kirkcudbright (Englishman's Burn) Water Order, 1950. (S.I. 1950 No. 1288.)
Stopping up of Highways (Shropshire) (No. 1) Order, 1950. (S.I. 1950 No. 1229.)
Stopping up of Highways (Staffordshire) (No. 1) Order, 1950. (S.I. 1950 No. 1217.)
Stopping up of Highways (Wiltshire) (No. 2) Order, 1950. (S.I. 1950 No. 1228.)
Sugar Beet Eelworm (Amendment) Order, 1950. (S.I. 1950 No. 1270.)
Town and Country Planning (Development Charge Exemptions) Regulations, 1950. (S.I. 1950 No. 1233.)
See *ante*, p. 509.
Town and Country Planning (Development Charge Exemptions) (Scotland) Regulations, 1950. (S.I. 1950 No. 1232.)
Use of Milk (Suspension of Restriction) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1235.)
Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1202.)
Veterinary Surgeons (University Degrees) (Bristol) Order of Council, 1950. (S.I. 1950 No. 1301.)
Ware Potatoes Order, 1950. (S.I. 1950 No. 1237.)

NOTES AND NEWS

Professional Announcement

Messrs. ALLEN & OVERY announce that they have taken into partnership Mr. ANTHONY OVERY, the son of Mr. T. S. Overy, and Mr. R. E. FAURE WALKER, who has been associated with the firm for a number of years.

Honours and Appointments

The Lord Chancellor has appointed Mr. F. G. HOGG to be a member of the Shipping Tribunal in the place of Mr. G. R. Rudolf, deceased.

Personal Notes

Mr. H. A. Badham, a former Town Clerk of Tewkesbury and at present clerk to both the borough and county magistrates, and Mrs. Badham celebrated their golden wedding anniversary on 2nd August. We tender them our hearty congratulations.

At the annual meeting of Gloucestershire Football Association on 28th July, Mr. H. F. Midwinter, solicitor, of Cheltenham, was presented with a clock to mark more than forty-two years' service with the association. He has been nominated for a life vice-presidency.

Miscellaneous

HIGH COURT OF JUSTICE

LONG VACATION, 1950

NOTICE

During the Vacation, up to and including Thursday, 31st August, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice Donovan.

CHANCERY DIVISION

Court Business.—The Hon. Mr. Justice Donovan will, until further notice, sit in King's Bench Court IV, Royal Courts of Justice, at 10.30 o'clock on Wednesdays, the 2nd, 9th, 16th, 23rd and 30th August, for the purpose of hearing such applications of the above, nature as, according to the practice in the Chancery Division, are usually heard in Court.

Papers for Use in Court.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made :—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of notice of motion, one bearing a 5s. impressed stamp.

3.—Two copies of writ and two copies of headings (if any).

4.—Office copy affidavits in support and in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of to apply at once to the Judge's Clerk in Court for the return of their papers.

Chancery Chambers Business.—The Chancery Chambers will open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

KING'S BENCH DIVISION

King's Bench Chambers Business.—The Hon. Mr. Justice Donovan will sit for the disposal of King's Bench Business in King's Bench Court IV at 10.30 o'clock on Fridays, the 4th, 11th, 18th, 25th, and Tuesday, the 29th August.

PROBATE, DIVORCE AND ADMIRALTY DIVISION

Summonses will be heard by the Registrar at the Probate and Divorce Registry, Somerset House, every day during the Vacation (Saturdays excepted).

Motions will be heard by a Registrar on Wednesdays, the 9th and 23rd August, and the 6th and 20th September, at the Probate and Divorce Registry at 11.30.

The Hon. Mr. Justice Donovan will sit for the disposal of Probate and Divorce Chambers Business in King's Bench Court IV at 10.30 o'clock on Thursdays, the 3rd, 10th, 17th, 24th and 31st August.

Judges' Summonses may be entered by leave of a Registrar on or before 2 o'clock on the Thursday of each week for hearing on the following Thursday.

Motions which must be heard by a Judge may be entered by leave of a Registrar for hearing on any Thursday.

Papers for Motions may be lodged at any time before 2 o'clock on the preceding Thursday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m. except Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

Urgent Matters when the Judge is not present in Court or Chambers.—Application may be made *in any case of urgency* to the Judge personally (if necessary), or by prepaid letter, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows :—"Chancery Official Letter : To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

The address of the Vacation Judge can be obtained, in appropriate cases, on application at Room 136, Royal Courts of Justice.

CHANCERY REGISTRARS' OFFICE,
ROYAL COURTS OF JUSTICE, ROOM 136.
July, 1950.

COAL-MINING (SUBSIDENCE) ACT, 1950

THE Ministry of Fuel and Power have issued the following list of addresses from which application forms for claims under this Act may be obtained and to which notice of the occurrence of subsidence damage may be sent (cf. p. 509, *ante*).

NORTHERN (N. & C.) DIVISION
(Northumberland and Cumberland)

Divisional office: Mining Estates Manager, Ellison Buildings (1st Floor), Ellison Place, Newcastle-on-Tyne, 1.
Area No. 1: No. 1 Area General Manager, Northern (N. & C.) Division, Akenside House (4th Floor), The Side, Newcastle-on-Tyne, 1.
Area No. 2: No. 2 Area General Manager, Northern (N. & C.) Division, Mining Offices, Cramlington, Northumberland.
Area No. 3: No. 3 Area General Manager, Northern (N. & C.) Division, Colliery Offices, Ashington, Northumberland.
Area No. 4: No. 4 Area General Manager, Northern (N. & C.) Division, Bankfield, Workington, Cumberland.

DURHAM DIVISION

Divisional Office: Mining Estates Manager, Akenside House (1st Floor), The Side, Newcastle-on-Tyne, 1.
Area No. 1: Harton General Offices, Station Road, South Shields.
Area No. 2: Mining Offices, Stockton Road, Sunderland.
Area No. 3: The Castle, Castle Eden, Co. Durham.
Area No. 4: Howlish Offices, Coundon, Bishop Auckland, Co. Durham.
Area No. 5: Brancepeth Colliery Offices, Willington, Co. Durham.
Area No. 6: Springfield House, Shotley Bridge, Co. Durham.

NORTH-EASTERN DIVISION
(Yorkshire)

Divisional Office: Estates Office, The Lodge, South Parade, Doncaster.
Area No. 1: N.C.B. Estates Office, Todwick Grange, Todwick, near Sheffield.
Area No. 2: N.C.B. Estates Office, Station Road, Doncaster.
Area No. 3: N.C.B. Estates Office, Headquarters Offices, Wath-on-Dearne, near Rotherham.
Area No. 4: N.C.B. Estates Office, Grimethorpe, near Barnsley.
Area No. 5: N.C.B. Estates Office, Tankersley Grange, Tankersley, near Barnsley.
Area No. 6: N.C.B. Estates Office, Ardsley House, Ardsley, near Barnsley.
Area No. 7: N.C.B. Estates Office, Crofton Old Hall, Crofton, near Wakefield.
Area No. 8: N.C.B. Estates Office, Allerton Bywater, near Leeds.

NORTH-WESTERN DIVISION
(Lancashire, Cheshire and North Wales)

Divisional Office: The Estates General Manager, 33 King Street, Wigan.
Area No. 1 (Manchester): Area Estates Office, Bedford Colliery Offices, Leigh, Lancs.
Area No. 2 (Wigan): Area Estates Office, Kirkless, Wigan, Lancs.
Area No. 3 (St. Helens): Area Estates Office, Ravenhead Colliery Offices, Burton Head Road, St. Helens, Lancs.
Area No. 4 (Burnley): Area Estates Office, Bank Parade, Burnley, Lancs.
Area No. 5 (North Wales): Area Estates Office, Ivy House, 32 King Street, Wrexham, North Wales.

EAST MIDLANDS DIVISION

Divisional Office: Mineral Estates Manager, Minerals Branch Divisional Headquarters, Sherwood Lodge, Arnold, near Nottingham.

WEST MIDLANDS DIVISION

Divisional Office: Mineral Estates Office, Himley Hall, Dudley, Worcs.
North Staffs Area: Area Subsidence Architect, N.C.B., 4 Woodlands Avenue, Wolstanton, Stoke-on-Trent.
Cannock Chase Area: Area Subsidence Surveyor, N.C.B., West Cannock Coal Board Unit, Hednesford, Staffs.
Warwickshire Area: Area Chief Surveyor, Lindley Lodge, Watling Street, Higham-on-the-Hill, near Nuneaton.
South Staffs and Salop Area: Area Chief Surveyor, Ednam House, Dudley, Worcs.

SOUTH-WESTERN DIVISION
(South Wales, Forest of Dean, Bristol and Somerset)

Divisional Office: Divisional Estates Manager, Estates Department, 31 Charles Street, Cardiff.

SOUTH-EASTERN DIVISION
(Kent)

Divisional Planning Officer, South-Eastern Divisional Coal Board, 1/3 Waterloo Crescent, Dover.

SCOTTISH DIVISION

Divisional Office: Mineral Estates Manager, 14 Grosvenor Street, Edinburgh, 12.
Lothians Area: Mineral Estates Engineer, Greenpark, Greenend, Liberton, Edinburgh, 9.
Fife & Clackmannan Area: Mineral Estates Engineer, Church Street, Cowdenbeath, Fife.
Central West Area: Mineral Estates Engineer, 36 Robertson Street, Glasgow, C.2.
Central East Area: Mineral Estates Engineer, 176 West George Street, Glasgow, C.2.
Ayr & Dumfries Area: Mineral Estates Engineer, Westfield, Ayr.

OBITUARY

MR. R. E. FEW

Mr. Robert Ernald Few, retired solicitor, of Esher, formerly of Surrey Street, Strand, W.C.2, died on 30th July, his eighty-fifth birthday. He was admitted in 1890.

MR. A. PARTINGTON

Mr. Adam Partington, formerly Town Clerk of Ilford and County Courts Group Registrar, died on 1st August, aged 70.

MR. R. H. PEARCE

Mr. Richard Henry Pearce, late magistrates' clerk of Acton, Willesden and Kensington, died on 1st August, aged 83.

CASES REPORTED IN VOL. 94

8th July to 12th August, 1950

For list of cases reported up to and including 1st July, see Interim Index.

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